

ESTTA Tracking number: **ESTTA529612**Filing date: **03/29/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	ORSA FOAM S.p.A.		
Entity	societ� per azioni	Citizenship	Italy
Address	Via A. Colombo 60 Gorla Minore Varese, 21055 ITALY		

Domestic Representative	Rebecca Gan Attorney of Record 209 Madison St., Ste. 500 Alexandria, VA 22314 UNITED STATES trademarks@young-thompson.com Phone:7035212297
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**Registration Subject to Cancellation**

Registration No	3623165	Registration date	05/19/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	IFOAM ehf. Fannborg 7-9 IS-200 K��pavogur  ICELAND		

**Goods/Services Subject to Cancellation**

Class 020. All goods and services in the class are cancelled, namely: furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests
Class 035. All goods and services in the class are cancelled, namely: advertising, business management, business administration; online retail store and wholesale distributorship services featuring furniture, mirrors, picture frames; figurines, ornaments, plaques, boxes and statues of bone, ivory, plaster, plastic, wax and wood

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	2013-3-29 Petition for Cancellation of Reg No. 3623165.pdf ( 6 pages )(92427 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rgan/
Name	Rebecca Gan
Date	03/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ORSA FOAM S.p.A.,

Petitioner,

v.

IFOAM EHF.,

Respondent.

Cancellation No. \_\_\_\_\_

Registration No. 3,623,165

**PETITION FOR CANCELLATION**

ORSA FOAM S.p.A. (the “Petitioner”) is a Società per Azioni (SpA) legally organized under the laws of Italy with offices located at Via A. Colombo 60, Gorla Minore (Varese) 21055, Italy.

IFOAM EHF. (the “Respondent”) is a limited liability company legally organized under the laws of Iceland, with offices located at Fannborg 7-9, IS-200 Kópavogur, Iceland.

The Petitioned Mark is registered for “furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests” in International Class 20 and for “advertising, business management, business administration; online retail store and wholesale distributorship services featuring furniture, mirrors, picture frames; figurines, ornaments, plaques, boxes and statues of bone, ivory, plaster, plastic, wax and wood” in International Class 35.

In support of this Petition, Petitioner alleges as follows:

## **FACTUAL BACKGROUND**

1. Petitioner is a leading manufacturer in flexible polyurethane foam production worldwide, under its mark “I-FO@M & Design” which is the subject of a pending U.S. trademark application.
2. To the best of Petitioner’s knowledge, Respondent is the record owner of U.S. Registration No. 3,623,165 for “I-FOAM INSULATION FOAM & Design” (the “Petitioned Mark”) in connection with, *e.g.*, “furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests” in International Class 20.
3. Trademark Registration No. 3,623,165 for “I-FOAM INSULATION FOAM & Design” issued on May 19, 2009 and is registered in connection with, *e.g.*, “furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests” in International Class 20.
4. Petitioner produces, *inter alia*, sundry International Class 20 goods under its “I-FO@M & Design” mark, and has a *bona fide* intent to use its “I-FO@M & Design” mark in the United States in the near future in connection with these goods.
5. On Nov. 23, 2011, Petitioner filed an application for “I-FO@M & Design” in International Classes in 17 and 20 based on intent to use I-FO@M & Design in interstate commerce, which was assigned U.S. Application Serial No. 85/480,002.
6. On March 9, 2012, Petitioner’s application was refused registration based in part on U.S. Registration No. 3,623,165.

**COUNT ONE: NON-USE**

7. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-6 above as if fully set forth herein.
8. Upon opinion and belief, Respondent is not currently using its “I-FOAM INSULATION FOAM & Design” mark in connection with “furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests” in the United States.
9. Upon opinion and belief, Respondent has never used its “I-FOAM INSULATION FOAM & Design” mark in connection with “furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests” in the United States.
10. Petitioner has been damaged by the presumptions flowing from the continued registration of Respondent’s mark, as the subject registration has been cited as a bar to the registration of Petitioner’s mark.

**COUNT TWO: ABANDONMENT**

11. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-10 above as if fully set forth herein.
12. As grounds for cancellation of the Registration, Petitioner alleges, on information and belief, that Respondent has abandoned the Petitioned Mark “I-FOAM INSULATION FOAM & Design.” On information and belief, Respondent is not currently using the Petitioned Mark in commerce within the scope of the challenged Registration. On

information and belief, Respondent has abandoned the Petitioned Mark by discontinuing use of the mark with no intent to resume use.

13. Petitioner believes that it is and will be damaged by continued registration of the Petitioned Mark as the subject registration has been cited as a bar to the registration of Petitioner's mark.

### **COUNT THREE: FRAUD**

14. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-13 above as if fully set forth herein.
15. Upon information and belief, Respondent did not have a *bona fide* intent to use "I-FOAM INSULATION FOAM & Design" in connection with, e.g., "furniture, mirrors, picture frames; figurines, ornaments, plaques, statues of bone, ivory, plaster, plastic, wax and wood; plastic boxes, wood boxes and non-metal chests" when it entered a Request for Extension of Protection to United States Application Serial No 79/053,793 on April 11, 2008, which was registered as U.S. Registration No. 3,623,165 on May 19, 2009.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be sustained and that U.S. Registration No. 3,623,165 be cancelled on the grounds of nonuse/abandonment with no intent to resume use and that Respondent has committed fraud on the Trademark Office in obtaining the subject registration.

March 29, 2013

Respectfully submitted,

/rgan/

Rebeccah Gan  
Attorney for Petitioner  
Young & Thompson  
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Alexandria, VA 22314  
Tel: (703) 521-2297

**CERTIFICATE OF SERVICE**

I hereby certify the foregoing Petition was served by U.S. mail, first class, postage prepaid, to the owner's domestic representative, and attorney/correspondent of record, Todd Braverman, c/o Bryan Cave LLP, 1290 Avenue of the Americas, New York, New York 10104; on this 29th day of March 2013.

/cpe/\_\_\_\_\_  
Christopher Emond